



LOUISIANA INSURANCE
RATING COMMISSION

JAMES H. "JIM" BROWN
COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

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Bulletin LIRC 96-03

DATE: APRIL 29, 1996

**TO: ALL PROPERTY AND CASUALTY INSURANCE COMPANIES
MAKING RATE AND RULE FILINGS IN LOUISIANA**

**RE: First Extraordinary Session, 1996
Tort Reform**

The First Extraordinary Session, 1996 of the Louisiana Legislature met to address special issues including tort reform. Tort reform legislation enacted will reduce or cap many claim settlements for liability insurance. The purpose of this Bulletin is to inform you of the tort reform legislation, distribute copies of the legislation, and notify you that consideration of the tort reform legislation must be directly included in all current and future liability rates and rule filings brought before the Louisiana Insurance Rating Commission (LIRC).

Therefore, each insurer having on file with the LIRC, liability rates, rules, rating plans, or other filings shall demonstrate and document by written filing the effects of the following legislative tort reform acts upon such liability filings' rates:

A. Comparative Fault - Civil Code Articles 2323 and 2324(B) and (C)

Act 3 (House Bill 21) of the First Extraordinary Session, 1996 of the Louisiana Legislature (copy attached), enacts Civil Code Articles 2323 and 2324 (B) and (C), became effective April 16, 1996. This Act stipulates that the degree of fault of all persons involved directly or indirectly in a liability issue should be determined.

B. Punitive Damages - Repealing of Civil Code 2315.3

Act 2 (House Bill 20) of the First Extraordinary Session, 1996 of the Louisiana Legislature (copy attached), which repealed Civil Code Article 2315.3, became effective April 16, 1996. This Act provides for the repeal of exemplary damages for wrongful storage, handling or transportation of hazardous or toxic substances.

C. Strict Civil Liability - Civil Code Articles 660, 667, 2321 and 2322, 2317.1

Act 1 (House Bill 18) of the First Extraordinary Session, 1996 of the Louisiana Legislature (copy attached), reenacts Civil Code Articles 660, 667, 2321, and 2322 and enacts 2317.1 became effective April 16, 1996. This Act provides for the assignment of liability for damage caused by a vice or defect in things or buildings, by an animal, or by a proprietor's use of his property.

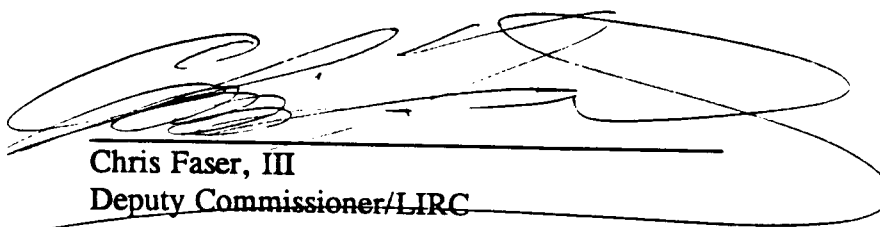
D. Limitations of Liability - R.S. 13:5101, 5104(B), 5105(D), 5106(D)(3) (4), 5107(D), and 5114

House Bill 239 of the First Extraordinary Session, 1996 of the Louisiana Legislature (copy attached), amends and reenacts R.S.13:5101, 5104(B), 5106(B); enacts R.S. 13:5105(D), 5106(D)(3) and (4), and 5107(D); and repeals R.S. 13:5114 will be effective by August 15, 1996. This Act provides for the procedures, limitations of liability and other related issues for suits against the state, state agencies, or political subdivisions of the state, or any officers or employees thereof.

It is the company's responsibility, when submitting rate and rule filings to the LIRC, to demonstrate the effect of the above mentioned legislation on rates and rules. If the company has a rate or rule filing previously deferred by LIRC action or on the May 15-16 agenda, the filing should be amended to address the above mentioned tort reform legislation prior to the LIRC meeting on May 15-16, 1996 (Note: Filing amendments from the floor are allowed during the LIRC meeting). Beginning in June, all new filings must provide direct consideration to the effects of tort reform before the filing will be placed on the LIRC agenda.

If a company does not have rates and rules on file with the LIRC for Liability coverage, the company should notify the LIRC within sixty (60) days, (by U.S. mail), that these statutes and articles do not apply.

If you have any questions regarding this bulletin, please call LIRC staff at (504) 342-5202.



Chris Faser, III
Deputy Commissioner/LIRC

Attachments

First Extraordinary Session, 1996

HOUSE BILL NO. 21

Act 2

BY REPRESENTATIVES MCMAINS, DOWNER, BRUNEAU, ACKAI,
R. ALEXANDER, BARTON, BOWLER, CLARKSON, CRANE,
DEVILLE, DIEZ, DUPRE, FLAVIN, FORSTER, FRITH, FRUGI,
GAUTREAUX, HAMMETT, HEATON, HEBERT, HILL,
HOPKINS, JOHNS, KENNARD, KENNEY, LONG, MCDONALD,
PERKINS, POWELL, SCALISE, SCHNEIDER, SHAW, JAC,
SMITH, JOHN SMITH, STELLY, STRAIN, THEUNISSE,
THOMPSON, TRAVIS, VITTER, WIGGINS, WINSTON, AN,
WRIGHT AND SENATORS DARDENNE, EWING, HAINKE,
BARHAM, CASANOVA, DEAN, HINES, ROBICHAUX,
ROMERO, SHORT, SIRACUSA, SMITH, AND SCHEDLER

AN ACT

To amend and reenact Civil Code Articles 2323 and 2324(B) and (C)
relative to offenses and quasi offenses; to provide relative to civil
liability for damages; to provide for the determination and allocation
of fault; to provide for comparative fault and the application and
effect thereof; to provide for solidary liability; to provide for joint
and divisible liability; to provide with respect to the effect of
interruption of prescription against a joint obligor; to provide for
exceptions for certain joint tortfeasors; and to provide for related
matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 2323 and 2324(B) and (C) are hereby
amended and reenacted to read as follows:

Art. 2323. Comparative fault

A. In any action for damages where a person suffers injury,
death, or loss, the degree or percentage of fault of all persons causing

or contributing to the injury, death, or loss shall be determined regardless of whether the person is a party to the action or nonparty, and regardless of the person's insolvency, ability to pay, or immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.

B. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any legal doctrine or theory of liability, regardless of the basis of liability.

C. Notwithstanding the provisions of Paragraphs A and B, if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced by the provisions of Paragraph A. Art. 2324. Liability as solidary or joint and divisible obligation

B. If liability is not solidary pursuant to Paragraph A, the liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such other person's insolvency, ability to pay, degree

fault, immunity by statute or otherwise, including but not limited to immunity as provided in R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable.

C. Interruption of prescription against one joint tortfeasor is effective against all joint tortfeasors.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

First Extraordinary Session, 1996

HOUSE BILL NO. 20

BY REPRESENTATIVES MCMAINS, DOWNER, BRUNEAU, ACKA,
R. ALEXANDER, BARTON, BOWLER, CLARKSON, CRANE,
DEVILLE, DIEZ, DONELON, FLAVIN, FORSTER, FRITH,
FRUGE, GAUTREAUX, HAMMETT, HEATON, HEBERT, HILL,
HOPKINS, JOHNS, KENNARD, KENNEY, LONG, McDONALD,
PERKINS, POWELL, SCALISE, SCHNEIDER, JACK SMITH,
JOHN SMITH, STELLY, STRAIN, THEUNISSEN, THOMPSON,
WIGGINS, WINSTON, AND WRIGHT

AN ACT

To repeal Civil Code Article 2315.3, relative to exemplary damages for
wrongful storage, handling, and transportation of hazardous or toxic
substances; to provide for the repeal of exemplary damages for
wrongful storage, handling, or transportation of hazardous or toxic
substances; and to provide for prospective application thereof.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 2315.3 is hereby repealed in
entirety.

Section 2. The provisions of this Act shall only be applicable
to causes of action which arise on or after the effective date hereof.

Section 3. This Act shall become effective upon signature by the
governor or, if not signed by the governor, upon expiration of the time
allowed for bills to become law without signature by the governor, as provided
in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the

governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

First Extraordinary Session, 1996

HOUSE BILL NO. 18

Act 1

BY REPRESENTATTVES MCMAINS, DOWNER, BRUNEAU, ACKAL, R. ALEXANDER, BARTON, CLARKSON, CRANE, DEVILLE, DIEZ, FLAVIN, FORSTER, FRITH, FRUGE, GAUTREAU, HAMMETT, HEATON, HEBERT, HILL, HOPKINS, JOHNS, KENNARD, KENNEY, LONG, MCDONALD, PERKINS, POWELL, SCALISE, SCHNEIDER, SHAW, JACK SMITH, JOHN SMITH, STELLY, STRAIN, THEUNISSEN, THOMPSON, TRAVIS, VITTER, WALSWORTH, WIGGINS, WINSTON, AND WRIGHT AND SENATORS DARDENNE, EWING, HAINKEL, BARHAM, BEAN, CASANOVA, DEAN, ELLINGTON, HINES, MALONE, ROBICHAUX, ROMERO, SHORT, SIRACUSA, SMITH, AND SCHEDLER

AN ACT

To amend and reenact Civil Code Articles 660, 667, 2321, and 2322 and to enact Civil Code Article 2317.1, relative to civil liability; to provide for liability for damage caused by a vice or defect in things or buildings, by an animal, or by a proprietor's use of his property; to provide for elements of proof in certain claims; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 660, 667, 2321, and 2322 are hereby amended and reenacted and Civil Code Article 2317.1 is hereby enacted to read as follows:

Art. 660. Keeping buildings in repair

The owner is bound to keep his buildings in repair so that neither their fall nor that of any part of their materials may cause damage to a neighbor or to a passerby. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by

the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

* * *

Art. 667. Limitations on use of property

Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him. However, if the work he makes on his estate deprives his neighbor of enjoyment or causes damage to him, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known that his works would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case. Nonetheless, the proprietor is answerable for damages without regard to his knowledge or his exercise of reasonable care, if the damage is caused by an ultrahazardous activity. An ultrahazardous activity as used in this Article is strictly limited to pile driving or blasting with explosives.

* * *

Art. 2317.1. Damage caused by ruin, vice, or defect in things

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage

could have been prevented by the exercise of reasonable care; and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

* * *

Art. 2321. Damage caused by animals

The owner of an animal is answerable for the damage caused by the animal. However, he is answerable for the damage only upon a showing that he knew or, in the exercise of reasonable care, should have known that his animal's behavior would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nonetheless, the owner of a dog is strictly liable for damages for injuries to persons or property caused by the dog and which the owner could have prevented and which did not result from the injured person's provocation of the dog. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

* * *

Art. 2322. Damage caused by ruin of building

The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall

preclude the court from the application of the doctrine of *res ipsa loquitur* in an appropriate case.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

First Extraordinary Session, 1996 Act 63

HOUSE BILL NO. 239 (Substitute for House Bill No. 27 to
Representative McMains, et al.)

BY REPRESENTATIVES MCMAINS, JOHNS, WIGGINS, DOWNEY,
BRUNEAU, ACKAL, R. ALEXANDER, BARTON, CLARKSON,
CRANE, DEVILLE, DIEZ, DAMICO, DONELON, FLAVIN,
FORSTER, FRITH, FRUGE, GAUTREAUX, HAMMETT,
HEATON, HEBERT, HILL, HOPKINS, KENNARD, KENNEDY,
LEBLANC, LONG, MCDONALD, MICHOT, PERKINS, POWELL,
SCHNEIDER, SHAW, JACK SMITH, JOHN SMITH, STELLER,
STRAIN, THEUNISSEN, THOMPSON, VITTER, AND WINSTON
AND SENATORS HAINKEL, SIRACUSA, ULLO, AND
SCHEDLER

AN ACT

To amend and reenact R.S. 13:5101, 5104(B), and 5106(B), to enact R.S.
13:5105(D), 5106(D)(3) and (4), and 5107(D), and to repeal R.S.
13:5114, all relative to suits against the state, state agencies,
political subdivisions of the state, or any officers or employees
thereof, in contract or tort; to provide for applicability of procedure
in such suits; to provide for limitations of liability; to designate Part
XV of Chapter 32 of Title 13 as the "Louisiana Governmental Claims
Act"; to provide relative to venue and jury trials in suits against
political subdivisions; to provide relative to service of citation; and
provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:5101, 5104(B), and 5106(B) are hereby amended
and reenacted and R.S. 13:5105(D), 5106(D)(3) and (4), and 5107(D)
hereby enacted to read as follows:

PART XV. SUITS AGAINST STATE, STATE AGENCIES,
OR POLITICAL SUBDIVISIONS

§5101. Title and application

A. This Part shall be known and may be cited as the "Louisiana Governmental Claims Act".

B. This Part applies to any suit in contract or for injury to person or property against the state, a state agency, an officer or employee of the state or a state agency arising out of the discharge of his official duties or within the course and scope of his employment, or a political subdivision of the state, as defined here, or against an officer or employee of a political subdivision arising out of the discharge of his official duties or within the course and scope of his employment. The provisions of this Part shall not supersede the provisions of R.S. 15:1171 et seq. Nothing in this Part shall apply to claims covered by R.S. 40:1299.39.

* * *

§5104. Venue

* * *

B. All suits filed against a political subdivision of the state against an officer or employee of a political subdivision for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the political subdivision is located or in the district court having jurisdiction in the parish in which the cause of action arises.

§5105. Jury trial prohibited

* * *

D. Notwithstanding the provisions of Subsection A, a political subdivision, by general ordinance or resolution, may waive the prohibition against a jury trial provided in Subsection A of this Section. Whenever the jury trial prohibition is waived by a political subdivision, and a jury trial is demanded by the political subdivision or the plaintiff in a suit against the political subdivision or against an officer or employee of the political subdivision, the demand for jury trial shall be timely filed in accordance with law. The rights and limitations upon a jury trial shall be as provided in Code of Civil Procedure Articles 1731 and 1732.

§5106. Limitations

* * *

B.(1) In all suits for personal injury to any one person, the total amount recoverable, including all derivative claims, exclusive of property damages, medical care and related benefits and loss of earnings, and loss of future earnings, as provided in this Section shall not exceed five hundred thousand dollars.

(2) In all suits for wrongful death of any one person, the total amount recoverable, exclusive of property damages, medical care and related benefits and loss of earnings or loss of support, and loss of future support, as provided in this Section, shall not exceed five hundred thousand dollars.

(3)(a) In any suit for personal injury wherein the court, pursuant to judgment, determines that the claimant is entitled to medical care and related benefits that may be incurred subsequent to judgment, the court shall order that a reversionary trust be established for the benefit of the claimant and that all medical care and related benefits, incurred subsequent to judgment be paid pursuant to the

reversionary trust instrument. The reversionary trust instrument shall provide that such medical care and related benefits be paid directly to the provider as they are incurred. Nothing in this Paragraph shall be construed to prevent the parties from entering into a settlement or compromise at any time whereby medical care and related benefits shall be provided, but with the requirement of establishing a reversionary trust.

(b) Any funds remaining in a reversionary trust that is created pursuant to this Subsection shall revert to the state, state agency, or political subdivision that established the trust, upon the death of the claimant or, upon the termination of the trust as provided in the trust instrument. The trustee may obtain the services of an administrator to assist in the administration of the trust. All costs, fees, taxes, or other charges imposed on the funds in the trust shall be paid by the trust. The trust agreement may impose such other reasonable duties, powers, provisions, and dispute resolution clause as may be deemed necessary or appropriate. Disputes as to the administration of the trust can be appealed to the district court. Nothing in this Paragraph shall preclude the state, state agency, or political subdivision from establishing other alternative funding mechanisms for the exclusive benefit of the claimant. The terms and conditions of the reversionary trust instrument or other alternative funding mechanism, prior to its implementation, must be approved by the court. The parties to the case may present recommendations to the court for the terms and conditions of the trust instrument or other funding mechanism to be included in the order. Upon request of either party, the court shall hold a contradictory hearing before

granting a final order implementing the reversionary trust or the alternative funding mechanism.

* * *

D.

* * *

(3) "Reversionary trust" means a trust established by the state, state agency, or political subdivision for the exclusive benefit of the claimant to pay the medical care and related benefits as they accrue, including without limitation reasonable and necessary amounts for all diagnosis, cure, mitigation, or treatment of any disease or condition from which the injured person suffers as a result of the injuries, and the *sequelae* thereof, sustained by the claimant on the date the injury was sustained. The trustee shall have the same fiduciary duties as imposed upon a trustee by the Louisiana Trust Code. Nothing herein shall limit the rights of claimants to contract with respect to attorney fees and costs.

(4) "Derivative claims" include but are not limited to claims for survival or loss of consortium.

* * *

§5107. Service of citation and process

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D. In all suits in which the state, a state agency, or political subdivision, or any officer or employee thereof is named as a party, service of citation shall be requested within ninety days of the filing of the initial pleading, which names a state, a state agency, or political subdivision or any officer or employee thereof as a party. If service is not requested by the party filing the action within that period, the action shall be dismissed without prejudice, after

contradictory hearing, as to the state, state agency, or political subdivision, or any officer or employee thereof, who has not been served. When the state, a state agency, or political subdivision or any officer or employee thereof, is dismissed as a party pursuant to this Section, the filing of the action, even as against other defendants, shall not interrupt or suspend the running of prescription as to the state, state agency, or political subdivision, or any officer or employee thereof. The effect of interruption of prescription as to other persons shall not be affected thereby.

Section 2. R.S. 13:5114 is hereby repealed.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature of the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____